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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 520

JOHN D. BINGAMAN, AS COMMISSIONER OF REVENUE OF THE STATE OF NEW MEXICO, ET AL.,

Appellants,

vs.

GOLDEN EAGLE WESTERN LINES, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW MEXICO.

STATEMENT AS TO JURISDICTION.

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J. R. MODRALL,
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Counsel for Appellants.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutes	1
Dates of order and application for appeal	2
Nature of the case	2
Cases sustaining jurisdiction	3

Table of Cases Cited.

Clark v. Poor (Ohio 1927), 274 U. S. 534, 71 L. Ed. 1199	4
Hendrick v. Maryland, 235 U. S. 610	4
Interstate Busses Corporation v. Blodgett, 278 U. S. 245, 72 L. Ed. 551	4
Interstate Transit Company v. Lindsey, 283 U. S. 183, 75 L. Ed. 953	4
Varney Air Lines v. Babcock, 1 Fed. Sup. 687	4

Statutes Cited.

Act of March 4, 1913, Chapter 160, 37 Stat. 1013; February 13, 1925, Chapter 229, Section 1, 43 Stat. 938; United States Code, Compact Edition, Title 28, Section 380 of the Judicial Code	2
Session Laws of 1933 of the State of New Mexico, Section 176, as amended	2, 3

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW MEXICO.

STATEMENT OF JURISDICTION.

Filed August 20, 1935.

In compliance with Rule 12 of the Supreme Court of the United States, appellant submits herewith its statement showing the basis of the jurisdiction of this Court to entertain the appeal in the above entitled cause.

A.

Statutes.

This cause was tried before a statutory three-judge court and the statutory jurisdiction of this Court to review by

direct appeal the order or decree herein complained of is conferred by the Act of March 4, 1913, Chapter 160, 37 Stat. 1013; February 13, 1925, Chapter 229, Section 1, 43 Stat., 938; United States Code, Compact Edition, Title 28, Section 380 of the Judicial Code.

It is provided by the last paragraph of said section as follows:

> "The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B.

Dates of Order and Application for Appeal.

The decree of the District Court was entered on the 9th day of August, 1935, and a petition for appeal was filed August 15, 1935, and allowed on the same date.

C.

Nature of the Case.

The petition of complainant was one seeking to enjoin John D. Bingaman, as Commissioner of Revenue of the State of New Mexico; Juan N. Vigil, as State Comptroller of the State of New Mexico; Frank H. Patton, as Attorney General of the State of New Mexico; Juanita Hill, as State Gasoline Tax Collector of the State of New Mexico, and Clyde Tingley, as Governor of the State of New Mexico, from enforcing Chapter 176 of the Session Laws of 1933 of the State of New Mexico (including amendments thereto) against the plaintiff herein so far as relates to gasoline or other motor fuel purchased by plaintiff or to be purchased by plaintiff within other States than the State of New

Mexico and placed or to be placed in its vehicles in other States than the State of New Mexico and used in said vehicles for the propelling of the same in interstate commerce within the State of New Mexico. Said Chapter 176 of the Session Laws of 1933 purports to levy a State gasoline tax of five cents per gallon on all gasoline used in the State of New Mexico.

The defendants filed an answer to the complaint wherein a majority of the allegations of fact were admitted but raised the questions of law. A stipulation of facts to be considered by the court was entered into by all parties to the cause and was filed in the case. The cause was tried by the United States District Court at Santa Fe, New Mexico. The only question really involved in the case is whether or not the laws of the State of New Mexico levy a tax on gasoline bought by an interstate carrier outside of the State of New Mexico and placed in the vehicles of the interstate carrier outside of the State of New Mexico and used for the propulsion of said vehicles over the highways of the State of New Mexico.

The court took the cause under advisement and on the 9th day of August, 1935, entered its decree perpetually enjoining the defendants as heretofore set forth.

D.

Cases Sustaining Jurisdiction.

The following decisions are believed to sustain the jurisdiction of this Court on an appeal from a decree from a statutory three-judge court wherein the question involved is whether the State of New Mexico may levy a tax on gasoline bought outside of the State of New Mexico and placed in the tanks of vehicles owned and operated by an interstate carrier outside of the State of New Mexico but used in the

propulsion of said vehicles over the public highways of the State of New Mexico:

Clark v. *Poor* (Ohio 1927), 274 U. S. 534, 71 L. Ed. 1199.

Hendrick v. *Maryland*, 235 U. S. 610.

Interstate Transit Company v. *Lindsey*, 283 U. S. 183, 75 L. Ed. 953.

Interstate Busses Corporation v. *Blodgett*, 278 U. S. 245, 72 L. Ed. 551.

Varney Air Lines v. *Babcock*, 1 Fed. Sup. 687.

Respectfully submitted,

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